

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LEE MAX BARNETT,

Petitioner,

vs.

KEVIN CHAPPELL¹,

Respondent.

No. CIV S-99-2416-JAM-CMK

DEATH PENALTY CASE

ORDER

Petitioner, a state prisoner proceeding with appointed counsel, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. A review of the docket shows some unresolved motions, including respondent's motion for additional time to file a reply relating to procedural defenses (Doc. 535), and a request to be relieved from default from filing the reply untimely (Doc. 356). In addition, respondent has filed a request that petitioner's pro se letter be filed (Doc. 363), and petitioner has filed a motion to strike that request (Doc. 364).

Respondent originally filed the request for seven additional days to file the reply, the respondent's third request, to which petitioner filed an objection. Prior to the court

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Kevin Chappell is substituted for his predecessor. The Clerk of the Court will be directed to update the docket to reflect the above caption.

1 addressing the request for additional time, respondent filed the reply and the request for relief
2 from default due to the untimely filing. The court notes that the reply was in fact filed within the
3 seven additional days requested. Good cause appearing therefor, the requests are granted, and
4 respondent's reply is deemed timely filed.

5 As for petitioner's pro se letter, which the respondent has requested be filed in
6 this matter, the court finds no reason to do so. Petitioner has been admonished several times to
7 not file pro se documents with the court. The issues raised in the pro se letter, dismissing penalty
8 claim and/or removing counsel, have been addressed in this case previously, and the court finds
9 no reason for rehashing the issue at this time. Indeed, the undersigned agrees with petitioner's
10 counsel that this is not an issue that is of any interest to the State. The request to file the letter is
11 therefore denied, and the request to strike the request to do so is granted.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The Clerk of the Court is directed to update the docket to reflect the
14 current respondent in this case;
- 15 2. Respondent's motion for additional time (Doc. 353) and relief from
16 default (Doc. 356) are granted;
- 17 3. Respondent's reply brief is deemed timely filed;
- 18 4. Respondent's motion to file petitioner's pro se letter (Doc. 363) is denied;
- 19 5. Petitioner's motion to strike (Doc. 364) is granted; and
- 20 6. The Clerk of the Court is directed to strike respondent's motion (Doc.
21 363) and restrict the exhibit attached thereto from public access.

22 DATED: September 26, 2012

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24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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